AF/ 2700 2613

# TRANSMITTAL LETTER
## (General - Patent Pending)

Docket No.
**90041.97R074(CSD-55)**

In Re Application Of: **Robert K. Riffee**

H34
11-7-03
P.2

| Serial No. | Filing Date | Examiner | Group Art Unit |
|---|---|---|---|
| **08/800,574** | **February 18, 1997** | **Richard J. Lee** | **2613** |

Title: **NARROWBAND VIDEO CODEC**



TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith is: **Reply Brief in triplicate (total 27 pages)**

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Dated: 22-OCT-2003

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| CERTIFICATE OF MAILING BY FIRST CLASS MAIL (37 CFR 1.8)<br>Applicant(s): **Robert K. Riffee** | Docket No.<br>**90041.97R074(CSD-55)** |
|---|---|

| Serial No. | Filing Date | Examiner | Group Art Unit |
|---|---|---|---|
| **08/800,574** | **February 18, 1997** | **Richard J. Lee** | **2613** |

Invention: **NARROWBAND VIDEO CODEC**




I hereby certify that this **Reply Brief in triplicate (total 27 pages)**
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**Kathleen A. Manczuk**
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Kathleen A. Manczuk
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# IN THE UNITED STATES PATENT & TRADEMARK OFFICE

## BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

| | | | |
|---|---|---|---|
| Applicant: | Robert K. Riffee | ) | Examiner: Lee, Richard J. |
| Serial No.: | 08/800,574 | ) | |
| Filed: | February 18, 1997 | ) | Art Unit: 2613 |
| For: | NARROWBAND VIDEO CODEC | ) | |



## REPLY BRIEF

Commissioner for Patents
MAIL STOP: APPEAL BRIEF - PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Examiner's Answer to the Appeal Brief filed May 30, 2003, Appellant hereby submits the following Reply Brief.

## *1. Real Party in Interest*

As per the Appeal Brief, the Real Party in Interest is Harris Corporation, having a place of business at 1025 West NASA Boulevard, Melbourne, Florida, 32919.

## *2. Related Appeals and Interferences*

As per the Appeal Brief, there are no related appeals or interferences.

## *3. Status of Claims*

As per the Appeal Brief, claims 1-30 are pending, claims 1-30 are rejected, and claims 1-30 are appealed.

## *4. Status of Amendments*

As per the Appeal Brief, there are no amendments after final.

***5. Summary of Invention***

Appellant acknowledges and agrees with the Examiner's comments regarding, and clarification of, the Summary of Invention section of the Appeal Brief, for which courtesy the Examiner is thanked.

***6. Issues***

As per the Appeal Brief, the issue is whether the invention is patentable over the combinations of references of record.

***7. Grouping of Claims***

As per the Appeal Brief, claims 1-18 stand or fall together as do claims 19-30.

***8. Argument***

In persisting in the rejection of claims 1-6 and 9-18 under 35 USC §103(a) as being unpatentable over U.S. Patent No. 5,389,965 (Kuzma) in view of U.S. Patent No. 6,002,720 (Yurt, et al.) and U.S. Patent No. 5,119,375 (Paneth, et al.) of record, the Examiner asserts that the present Specification defines the terms *frame* and *means for framing* "different[ly] from what is commonly known as a picture of video data", and that therefore the term *frame* as used in the present Specification amounts to "nothing more

than grouping some combination of data together". The Examiner concludes that therefore the data structures of Yurt, et al., can be considered frames as defined in the present Specification. (*page 12, lines 16-20, Examiner's Answer, Paper No. 33*). Appellant respectfully submits that it is the Examiner, not the present Specification, that has defined or attempted to define the terms *frame* and *means for framing* as nothing more than some arbitrary grouping or combination of data. In contrast, Appellant submits that the present Specification distinctly and particularly defines the terms *frame* and *means for framing*, and that the cited references, whether considered alone or in combination, fail to disclose or suggest a similar data structure.

It is axiomatic that an Applicant may be his or her own lexicographer as long as the meaning assigned to the term is not repugnant to the term's well known usage. *In re Hill, 161 F.2d 367, 73 USPQ 482 (CCPA 1947).* Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd., 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998).* Further, when the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz, 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir. 1989).*

The present specification states that "[e]ach frame comprises an identical sequence of bytes and includes, in sequence, two control bytes, a plurality of sequential

sets of data bytes and a plurality of error correction bytes." (*page 2, lines 2-5 of the present specification*). "In particular, each set of data bytes has the same number of video bytes between sequential audio bytes. Each byte includes eight bits of data." (*page 2, lines 8-11 of the present specification*). Similarly, claim 1 recites in part "each frame comprising, in sequence, two control bytes, a plurality of sequential sets of data bytes" wherein each set of data bytes includes "a sequence of at least one audio byte and a plurality of video bytes, at least one of said plurality of video bytes between each sequential audio byte".

Thus, Appellant submits the meaning assigned to the term *frame* by the present Specification and Claims is not in any way repugnant to the term's well known usage and that that the meaning assigned to the term *frame* is sufficiently clear from the present Specification and Claims so as to be clearly and unambiguously understood by a person of ordinary experience in the field of the invention. Moreover, Appellant submits that, since the present Specification and Claims distinctly point out and particularly state the meaning that the term *frame* is intended to have, claim 1 should have been and must be examined using that meaning.

In analyzing claim 1, the Examiner appears to have paid little attention to the definition of the term *frame* provided by the present Specification and Claims. Rather, the Examiner has provided his own definition of the term *frame* as being "nothing more than grouping some combination of data together, such as the audio and video as claimed". (*page 12, lines 16-17, Examiner's Answer, Paper No. 33, Emphasis Added*).

It is apparent that the Examiner applied the some combination definition of the term *frame* to the examination of the Claims. However, such a some combination definition for the term *frame* is not found in the present Specification and Claims, and is in fact much broader than the specific definition provided therein. Since the specification provided the meaning that the term *frame* is intended to have, and since the claim should have been examined using that meaning, Appellant respectfully submits that claim 1 was improperly examined and rejected by applying the much broader some combination definition.

Had claim 1 been examined using the appropriate definition of the term *frame*, i.e., the definition supplied by Appellant in the present Specification and Claims, Appellant submits the Examiner would find that the cited references, alone or in combination, fail to disclose or suggest the subject matter of claim 1.

The Examiner asserts that items 1, 2 and 3 of Figure 8d of Yurt, et al., may be considered a frame. However, the arrangements of items 1-3 include video frames 812, audio frames 812, and data frames 832 (*column 18, lines 45-60, Emphasis Added*). The frames of Yurt, et al., are not bytes of data. Thus, Yurt, et al., discloses an arrangement of frames rather than an arrangement of bytes of data into a frame as disclosed and claimed by the present application. For example, each video frame 812 consists exclusively of a plurality of sequential video samples 811, and each data frame 832 consists exclusively of a plurality of sequential data bytes. Thus, each frame of data consists exclusively of a plurality of bytes of the same type of data. Within any one

frame, the bytes of information are not separated from each other by a byte of a different data type. Thus, Yurt, et al., fails to disclose or suggest, either alone or in combination with the other cited references, that each set of data bytes includes a sequence of at least one audio byte and a plurality of video bytes, at least one of the plurality of video bytes being disposed between each sequential audio byte, as recited in part by claim 1.

For the foregoing reasons, and for all the reasons of record, Appellant submits that claim 1 and claims 2-18 depending therefrom are in condition for allowance and respectfully requests same.

Claims 7-8 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 5,389,965 (Kuzma) in view of U.S. Patent No. 6,002,720 (Yurt, et al.) and U.S. Patent No. 5,119,375 (Paneth, et al.)., and further in view of U.S. Patent No. 5,583,912 (Schillaci, et al.) of record, Appellant respectfully points out that claims 7 and 8 depend from claim 1, which is in condition for allowance for the reasons given hereinabove and for all the reasons of record. Accordingly, claims 7 and 8 are also in condition for allowance which is hereby respectfully requested.

In persisting in the rejection of claims 19-20 and 23-30 under 35 USC §103(a) as being unpatentable over U.S. Patent No. 5,389,965 (Kuzma) in view of U.S. Patent No. 5,577,190 (Peters) and U.S. Patent No. 5,784,572 (Rostoker, et al.) of record, the Examiner asserts that Kuzma inherently includes a Digital Signal Processor (DSP). Responsive thereto, Appellant respectfully traverses.

It is well settled that a prior art reference may be relied upon in rejecting claims under 35 U.S.C. §§102 or 103 for what that reference expressly, implicitly and/or inherently discloses. *See In re Napier, 55 F.3d 610, 34 USPQ2d 1782 (Fed. Cir. 1995) and In re Grasselli, 713 F.2d 731, 218 USPQ2d 769 (Fed. Cir. 1983).* However, it is equally well settled that "[t]o establish inherency, the extrinsic evidence `must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 51 (Fed. Cir. 1999) (internal citations omitted).*

Appellant respectfully points out that the record is devoid of extrinsic evidence tending to establish that the missing descriptive matter, i.e., digital signal processor(s), is present in the cited references. The only "evidence" tending to establish the presence of one or more DSP's in the cited references are assertions by the Examiner that Kuzma must inherently include a DSP. There is no extrinsic evidence establishing or tending to establish that the missing descriptive matter is necessarily present in the cited references. Therefore, Appellant submits that an improper standard of inherency has been applied and respectfully requests withdrawal of the rejection. Accordingly, Appellant submits that claims 19-20 and 23-30 are in condition for allowance and respectfully requests same.

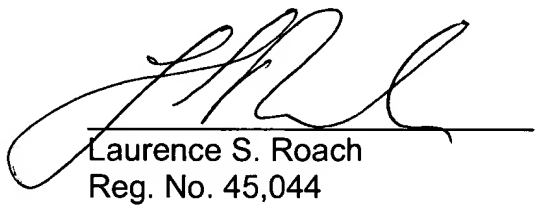
For the foregoing reasons, and for all the reasons of record, Appellant submits that claim 19, claims 20-28 depending therefrom, and claims 29-30 are in condition for allowance, which is hereby respectfully requested.

Claims 21-22 stand rejected under 35 USC §103(a) over U.S. Patent No. 5,389,965 (Kuzma) in view of U.S. Patent No. 5,577,190 (Peters) and U.S. Patent No. 5,784,572 (Rostoker, et al.), and further in view of U.S. Patent No. 5,583,912 (Schillaci, et al.) of record. Appellant respectfully points out that claims 21 and 22 depend from claim 19, which is in condition for allowance for the reasons given hereinabove and for all the reasons of record. Accordingly, claims 21 and 22 are also in condition for allowance which is hereby respectfully requested.

For all the foregoing reasons, Applicant submits that the pending claims are in condition for allowance and respectfully requests same.

Respectfully requested,

22-OCT-2003



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